

EXHIBIT 5

**PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("**MOU**") is made and entered into as of June __, 2017 by and among the Government of Puerto Rico (the "**Government**"), acting by and through the Secretary of the Treasury (the "**Secretary**"), the Retirement System for Employees of the Government of the Commonwealth of Puerto Rico ("**ERS**"), acting through its Administrator (the "**Administrator**"), and the Puerto Rico Fiscal Agency and Financial Advisory Authority ("**FAFAA**"); each of the Government, ERS and FAFAA is referred to herein individually as a "**Party**" and collectively as the "**Parties**").

The purpose of this MOU is to set forth the understanding of the Parties regarding the payment of pension and other benefits ("**Retirement Benefits**"), including without limitation those under Act 447 of May 15, 1951, as amended (the "**ERS Act**"), during such period as this MOU is in effect.

WITNESSETH:

WHEREAS, the ERS is a statutory trust that was created by the ERS Act to provide pension and other benefits to retired employees of the Government, most of the public corporations, and the municipalities of Puerto Rico;

WHEREAS, the ERS will deplete its liquid assets in the near term and, as a result, will be unable to pay all Retirement Benefits due in fiscal year 2018;

WHEREAS, on September 30, 2016, the Financial Oversight and Management Board for Puerto Rico (the "**Oversight Board**") designated the ERS a "covered entity" pursuant to Section 101(d) of the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 ("**PROMESA**");

WHEREAS, the Government of Puerto Rico submitted to the Oversight Board a Fiscal Plan (as defined in PROMESA), which was certified by the Oversight Board on March 13, 2017 as compliant with PROMESA, as amended (the "**PR Fiscal Plan**");

WHEREAS, the PR Fiscal Plan acknowledges the depletion of the ERS's assets and provides that (a) with the exhaustion of the ERS's assets, Retirement Benefits must be funded on a pay-as-you-go basis, and (b) future employee contributions should be segregated into individually-owned accounts in order to protect current employees;

WHEREAS, on May 21, 2017, the Oversight Board filed a Title III Petition on behalf of the ERS under Section 304(a) of PROMESA;;

WHEREAS, in order to safeguard the payment of Retirement Benefits during fiscal year 2018 as contemplated by the PR Fiscal Plan, the Government of Puerto Rico's approved budget for fiscal year 2018 (the "*FY 2018 Budget*"), includes an appropriation for the payment of Retirement Benefits to beneficiaries of the ERS (together with retirement benefits of the Commonwealth of Puerto Rico Teacher's Retirement System and the Puerto Rico Judiciary Retirement System) (the "*PayGo Appropriation*"); and

WHEREAS, on June 23, 2017, the Legislative Assembly of Puerto Rico approved Joint Resolution of the House No. 187, to, among other things, authorize FAFAA to establish and implement all the necessary mechanisms so that the municipalities and the public corporations contribute the Pay-As-You-Go Charge (as defined below) to fund the Retirement Benefits, in lieu of all other contributions required to be made by employers pursuant to the ERS Act or any other statute, including, without limitation, the employer contribution of 16.775% of payroll for fiscal year 2018 required pursuant to Article 5-106¹ of the ERS Act and the Additional Uniform Contribution established under Article 5-117² of the ERS Act.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties agree as follows:

1. **Definitions**. In addition to the terms defined in the Preamble hereto, as used in this MOU the following terms shall have the following meanings:

- a. "***Beneficiaries***" means any person entitled to receive an annuity or other benefit pursuant to the ERS Act.
- b. "***CRIM***" means the Municipal Revenues Collection Center.
- c. "***Employee Contributions***" means the contributions required to be made by Participants pursuant to Article 5-105³ of the ERS Act.
- d. "***Employer***" means the Government of Puerto Rico and any public corporation and municipality whose retirees participate in the ERS.
- e. "***ERS Available Funds***" means, as of any relevant date, all funds available to the ERS, as determined by FAFAA, after making a reasonable reserve for the payment of operating expenses of the ERS.
- f. "***Participant***" means any active employee covered by the ERS.
- g. "***Pay-As-You-Go Charge***" means, with respect to any Employer, the amount determined in accordance with Section 2(b) of this MOU as the amount required to be paid by such Employer.

¹ 3 LPRA §787f.

² 3 LPRA §787q.

³ 3 LPRA §787e.

2. **Obligations of the Parties.** In order to safeguard the payment of Retirement Benefits for fiscal year 2018 and carry out the purpose of this MOU in accordance with the PR Fiscal Plan and the FY 2018 Budget, commencing July 1, 2017, the Parties agree as follows:

a. *Calculation of Retirement Benefits:* The ERS will continue to handle all administrative matters for the proper calculation of Retirement Benefits payable to Beneficiaries. The ERS will remit to the Secretary and FAFAA on a monthly basis, and in such format as the ERS and the Secretary may agree upon, all the information that the Secretary may require in order for the Government of Puerto Rico to make timely payment of Retirement Benefits to Beneficiaries.

b. *Calculation of Pay-As-You-Go Charge:* ERS will provide to FAFAA such information as FAFAA may require to calculate the Pay-As-You-Go Charge. The Pay-As-You-Go Charge will be determined by FAFAA at its sole discretion. The Pay-As-You-Go Charge will be calculated for each Employer as applicable, as the amount required to be paid by such Employer to the ERS in order for the Government to pay all Retirement Benefits corresponding to Beneficiaries of that Employer.

c. *Invoicing of Pay-As-You-Go Charge; Set-Off.* The ERS will submit a [monthly] invoice to each Employer for the Pay-As-You-Go Charge, and will instruct Employers to deposit the Pay-As-You-Go Charge directly into an account designated by the Secretary. In accordance with Section 12 of the Joint Resolution, the Secretary may set-off any Pay-As-You-Go Charges payable by an Employer from appropriations made in such Joint Resolution to such Employer or any other pending remittance from the General Fund, in addition to the other remedies mentioned in paragraph (g) below.

d. *Transfer of ERS Available Funds.* The ERS will provide to FAFAA the necessary information to assist FAFAA in determining the ERS Available Funds and will transfer to the Secretary, in conformance with his instruction, the ERS Available Funds.

e. *Payment of Retirement Benefits:* The Secretary will receive the information provided by the ERS with respect to the Retirement Benefits payable to Beneficiaries and will, from the ERS Available Funds, the Pay-As-You-Go-Charge, and the PayGo Appropriation, make monthly payment of Retirement Benefits directly to Beneficiaries.

f. *Segregation of Employee Contributions:* All Employee Contributions will be deposited into a segregated account established by the Secretary with a financial institution to be designated by the Secretary to be held in trust for the benefit of each Participant in accordance with Article 5-104⁴ of the ERS Act.

g. *Penalties for Non-Payment of the Pay-As-You-Go Charge and Employee Contribution.* The Secretary will notify the Administrator of any deficiency by an Employer in the monthly payment of the Pay-As-You-Go Charge or in the timely transfer by an Employer of Employee Contributions, and the Administrator, as directed by the Secretary,

⁴ 3 LPRA §787d.

will take the steps to enforce the collection of such amounts as set forth in the ERS Act, including in the case of municipalities by notifying CRIM of such debts and requiring direct payment from CRIM.

3. **Term.** This MOU shall become effective on the date first above written and will remain in force until the earlier of: (i) the date on which any statute approved by the Legislature of Puerto Rico becomes effective providing for the implementation of the matters covered hereby, and (ii) December 31, 2017; provided, however, that FAFAA may extend the term of this MOU for additional periods of up to six months each by providing written notice to the other Parties of such extension indicating the duration thereof.

4. **Parties in Interest.** This MOU shall inure to the benefit of and be binding upon the Parties. Nothing in this MOU, express or implied, is intended to confer upon any person or entity, other than the Parties, any rights or remedies under or by reason of this MOU.

5. **Governing Law.** This MOU shall be governed by the laws of the Commonwealth of Puerto Rico.

6. **Entire Agreement.** This MOU contains the entire agreement as to the matters contained herein between the Parties, and supersedes all prior agreements, contracts, promises or representations, whether written or oral between the Parties. No subsequent or contemporaneous agreements, contracts, promises or representations regarding the subject matter hereof shall be binding and effective between the Parties, unless set forth in writing and signed by authorized representatives of the Parties.

7. **Counterparts.** This MOU may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this MOU effective as of the date first above written.

GOVERNMENT OF PUERTO RICO

By: _____
Name: Raúl Maldonado Gautier
Title: Secretary of the Treasury

**RETIREMENT SYSTEM FOR EMPLOYEES
OF THE GOVERNMENT OF
THE COMMONWEALTH OF PUERTO RICO**

By: _____
Name: Luis M. Collazo Rodríguez
Title: Administrator

**PUERTO RICO FISCAL AGENCY
AND FINANCIAL ADVISORY AUTHORITY**

By: _____
Name: Gerardo José Portela Franco
Title: Executive Director

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